

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
AT MARTINSBURG**

ALVIN DARRELL SMITH,

Petitioner,

v.

**CIVIL ACTION NO. 3:05CV130
(BROADWATER)**

AL HAYNES, *Warden*,

and

FEDERAL EMPLOYEES MEDICAL/DENTAL STAFF,

Respondents,

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day the above styled case came before the Court for consideration of the Report and Recommendation of Magistrate Judge John S. Kaull, dated August 31, 2006, and the Petitioner's objections thereto filed on September 8, 2006. In the interests of justice and in accordance with 28 U.S.C. § 636(b)(1), the Court has conducted a *de novo* review.

The Court, after reviewing the above, is of the opinion that the Magistrate Judge's Report and Recommendation should be and is hereby **ORDERED** adopted. The Petitioner's objections to the Magistrate Judge's Report and Recommendation fail to adequately address the grounds for the Magistrate Judge's recommendation.

Mr. Smith's Objections consist of an initial restatement of his complaints and provides his account of the procedural action in this case. The account does not raise a valid objection to the

Magistrate Judge's findings or the previous action in this case.

With respect to exhaustion of administrative remedies, the Petitioner indicates that he has filed over 120 grievances with prison officials at four Bureau of Prisons (BOP) institutions. The Petitioner relies on this record of the BOP denying him the medical care and other relief he requests as evidence of exhaustion of his claims. Mr. Smith's objections fail to address or document an exhaustion of available remedies under the BOP's three tiered procedure for resolving administrative complaints.

Mr. Smith's objections to the Report and Recommendation also seem to misconstrue the meaning of the Magistrate Judge's finding that the Petitioner failed to state a claim upon which relief can be granted. The Petitioner repeatedly objects to the Magistrate Judge's finding that he failed to state a claim upon which relief can be granted by stating that he is not seeking money damages. The Petitioner then goes on to repeat vague claims of constitutional violations accompanied by conclusory statements that the BOP is subjecting him to various abuses in violation of law and policy. The Petitioner's repeated statements, vaguely complaining of his treatment under the custody of the BOP, fail to make a sufficient statement of actionable wrongs.

The Court, therefore, **ORDERS** that, based on the reasons set forth in the Magistrate Judge's Report and Recommendation, the Petitioner's Motion for Writ of Mandamus (Document No. 1) be **DENIED** and this case be **DISMISSED** from the active docket of the Court. In addition, it is also **ORDERED** that the Petitioner's Motion to Consolidate Cases (Document No. 21), Motion for Extension of Time to File 1983 Complaint (Document No. 22), Second Motion to Consolidate Cases (Document No. 24), Motion to Have Order Issued (Document No. 28), and Motion for Order to Place Petitioner on Correct Medications (Document No. 30), be **DENIED**.

It is so **ORDERED**.

The Clerk is directed to transmit true copies of this Order to the Petitioner and all counsel of record herein.

DATED this 14th day of December 2006.


W. CRAIG BROADWATER
UNITED STATES DISTRICT JUDGE